

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform)	WC Docket No. 11-42
and Modernization)	
)	
Telecommunications Carriers Eligible)	WC Docket No. 09-197
For Universal Service Support)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

**JOINT LIFELINE ETC PETITIONERS' REPLY IN SUPPORT OF THEIR PETITION
FOR RECONSIDERATION**

The Joint Lifeline ETC Petitioners¹ (Joint Petitioners) hereby submit this reply in support of our petition for reconsideration of the Lifeline Modernization Order² (Order) to address five issues raised by respondents in their filings. First, the Joint Consumer Groups misunderstand Joint Petitioners' bundle proposal and fail to appreciate the value bundled offerings offer consumers. Second, contrary to GVNW's claims, the Commission adequately noticed the 12-month broadband port freeze, which will provide significant value to consumers and is necessary for ETCs to meet the applicable broadband minimum service standards and handset requirements. Third, NASUCA's opposition to a streamlined voice ETC application process

¹ The Joint Lifeline ETC Petitioners are American Broadband & Telecommunications Company, Blue Jay Wireless, LLC, i-wireless LLC, Telrite Corporation (collectively, the Lifeline Connects Coalition), and Assist Wireless, LLC, Easy Telephone Services Company d/b/a Easy Wireless, Prepaid Wireless Group LLC and Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect).

² See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification (filed June 23, 2016) (Joint Petitioners Petition); *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (Lifeline Modernization Order or Order).

ignores the overwhelming evidence that the current process takes an unreasonable amount of time and can be streamlined consistent with the new Lifeline Broadband Provider application process. Fourth, the Joint Consumer Groups dramatically underestimate the burdens that rolling recertification would have for consumers, ETCs, and the administration of the Lifeline program. Fifth, Joint Petitioners support TracFone's call to restore the 60 day non-usage rule and 30-day notification period.

I. The Joint Consumer Groups Fail to Appreciate the Value of Bundled Offerings that Satisfy the Broadband Minimum Service Standard

In our petition for reconsideration, Joint Petitioners requested that the Commission clarify that an ETC may meet the applicable broadband minimum service standard with a broadband offering that “makes available” the minimum standard, but allows a consumer to decrement the broadband offering using data, voice minutes or text messages.³ This interpretation is consistent with the text of § 54.408(a)(1), the Lifeline Modernization Order and common industry practice, and would provide consumers with additional flexibility to choose a plan that meets their needs.

Joint Consumer Groups challenge Joint Petitioners' request, which they incorrectly characterize as a proposal to “[a]llow providers to offer a decremented (i.e., diminished) bundle option that does not meet the minimum standards for either voice or broadband services.”⁴ They argue that “[p]roviders should not be able to collect a generous Lifeline subsidy in exchange for offering low quality service”⁵

³ Joint Petitioners Petition at 11.

⁴ *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Consolidated Opposition of the Greenlining Institute, et al. to Petitions for Reconsideration and Clarification of CTIA, et al., 6-7 (filed July 29, 2016) (Joint Consumer Groups Opposition).

⁵ *See id.* at 7.

Unfortunately, the Joint Consumer Groups misunderstand Joint Petitioners' proposal and the value it would create for consumers. Joint Petitioners did not request that the Commission permit service plans that do not meet the minimum service standards. Rather, Joint Petitioners requested that the Commission permit service plans that meet the minimum service standard (e.g., 500 MB) while providing consumers with the flexibility to shift the use of those plans in the manner that best meets their communications needs, whether it be broadband, voice or text.

In this way, our proposed use of bundles provides additional consumer choice and enables ETCs to "improve their service offerings and attract consumers" through flexible plans that meet consumers' needs without forcing them into plans that offer more than they need or would require a minimum charge.⁶ Q Link agrees, arguing that Joint Commenters' "reading of the [Lifeline Modernization] Order better respects consumer choice and does not force low-income consumers to buy voice or data capacity that they would not use" and plans that "make the most sense for their personal and budgetary needs."⁷ In fact, the Joint Consumer Groups have supported this concept in California.⁸

For these reasons, the Commission should disregard the Joint Consumer Groups' challenge and clarify that ETCs may meet the minimum service standards through bundles that may be decremented through the use of data, voice minutes or text messages.

⁶ See Lifeline Modernization Order ¶ 103.

⁷ *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Comments of Q Link Wireless LLC, 2-6 (filed July 29, 2016).

⁸ See *Order Instituting Rulemaking regarding Revisions to the California Universal Telephone Service (LifeLine) Program*, R.11-03-013, Opening Comments of the Utility Reform Network, The Center for Accessible Technology and the Greenlining Institute on Amended Scoping Memorandum and Ruling, 45 (filed Mar. 4, 2016) ("Consumers must not be forced to purchase a LifeLine plan with additional services that they do not want or need.").

II. GVNW Fails to Recognize the Value that a 12-Month Port Freeze Will Have for Consumers

In its opposition, GVNW Consulting challenges the 12-month benefit port freeze on two grounds. First, it echoes NTCA, WTA, and USTelecom, arguing that the Commission failed to provide adequate notice that it was considering a 12-month benefit port freeze.⁹ Second, GVNW argues that there is no evidence in the record that permitting a Lifeline provider to retain a BIAS customer for a year will encourage better service.¹⁰ GVNW is wrong on both counts.

With respect to the first issue, the Commission provided sufficient notice of the broadband port freeze in the FNPRM. Even if there had not been adequate notice, there was no “prejudice in the form of arguments they would have presented to the agency if given a chance” because the port freeze itself predated the FNPRM and the concept of an extended benefit port freeze played a prominent role in the proceeding.¹¹

Second, GVNW is incorrect to suggest that there is no evidence that a broadband benefit port freeze will lead to better service for consumers. Without an adequate velocity check on re-enrollments, “flipping” becomes endemic, creating massive disincentives for carriers to enter the market and offer advanced service plans and handsets. As Sprint has argued, “[t]he existing 60-day freeze appears to have moderated flipping as compared to situations in which there is no freeze, thereby increasing stability in the Lifeline program.”¹² This stability gives providers a “stronger incentive to vigorously compete for eligible customers through better broadband

⁹ *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., GVNW Consulting Inc. Opposition to Petitions for Reconsideration, 7-8 (filed July 29, 2016).

¹⁰ *See id.*

¹¹ *See Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Joint Lifeline ETC Respondents’ Opposition to Petitions for Reconsideration, 3-6 (filed July 29, 2016) (Joint Respondents Opposition) (citing comments and *ex parte* letters referencing the 12-month benefit port freeze).

¹² Letter from Norina Moy, Director, Gov’t Affairs, Sprint Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., 2 (filed Feb. 3, 2016).

service offerings and outreach.”¹³ Further, the benefit port freeze is an essential prerequisite to improving service offerings and meeting the Commission’s new broadband minimum service standards and handset requirements.¹⁴

Therefore, the Commission should reject GVNW’s challenge to the 12-month benefit port freeze, along with the challenges of NTCA, WTA, and USTelecom, each of which abdicated its opportunity to shape the proposal during the proceeding and now fail to provide a compelling reason to reverse course.

III. NASUCA’s Opposition to a Streamlined Voice ETC Application Process Ignores the Overwhelming Evidence That the Current Process Takes an Unreasonable Amount of Time

In our petition for reconsideration, Joint Petitioners requested that the Commission reconsider its decision to limit streamlined ETC designation to Lifeline Broadband Providers and permit streamlined ETC application processing for Lifeline voice providers as well.¹⁵ As the Lifeline Joint Commenters argued in their initial comments, “the current approval process—at both the federal and state level—has become rife with burdensome requirements, protracted approval timelines, and significant uncertainty.”¹⁶ NASUCA opposes Joint Petitioners’ call for a streamlined ETC approval process for voice-only providers because, in its view, the burdens of the current process are not unreasonable.¹⁷ NASUCA is incorrect.

¹³ See Lifeline Modernization Order ¶ 389.

¹⁴ See Joint Respondents Opposition at 6-9.

¹⁵ See Joint Petitioners Petition at 17-19.

¹⁶ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al. Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program, 60 (filed Aug. 31, 2015) (Joint Commenters Comments).

¹⁷ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., NASUCA Opposition to Petitions for Reconsideration, 6 (filed July 29, 2016).

In the year since the Commission launched its modernization proceeding, there has been little progress at the federal or state level to act on the many outstanding ETC applications. At the federal level, we appreciate that the Commission seems prepared to move forward on processing pending federal voice ETC applications.¹⁸ However, the Commission has not yet made any formal commitment to move promptly on applications that have been outstanding for four or more years. At the state level, ETCs also continue to face unreasonable delays. In New Mexico, the Public Regulation Commission has not approved a single ETC application submitted since 2012. Similarly, in South Dakota, the Public Utilities Commission has only approved two ETC applications since 2012, leaving four other applications currently pending for an average of 35 months. Since 2012, the Washington Utilities and Transportation Commission has left three ETC applications still pending for an average of 31 months.

Joint Petitioners are not aware of any justifiable reason why these applications should be left pending for more than three months, let alone four years or more. These delays are unreasonable, and deprive low-income consumers of competition in the Lifeline market that drives service and handset improvements. The Commission should commit to addressing these petitions by adopting a streamlined process for voice ETC applications.

IV. Joint Consumer Groups Underestimate the Confusion and Burdens That Rolling Recertification Would Have for Consumers

In our petition for reconsideration, Joint Petitioners requested that the Commission reconsider its rolling recertification rule, which will confuse consumers and result in unnecessary consumer churn that will undermine the ability of ETCs to innovate.¹⁹ Joint Petitioners asked the

¹⁸ See *Wireline Competition Bureau Requests Carrier Affirmations Concerning Pending Lifeline Compliance Plans or ETC Petitions*, Public Notice, DA 16-550 (rel. May 18, 2016).

¹⁹ See Joint Petitioners Petition at 21-22.

Commission to clarify that ETCs will continue to be heavily involved in the recertification process, and proposed that the Commission require consumers to recertify their eligibility when they switch service providers, which would reset the 12-month recertification clock to the new enrollment date. The Joint Consumer Groups ask the Commission to reject Joint Petitioners' request, arguing that recertification needs to be as easy as possible for consumers and that forcing consumers to recertify multiple times per year would confuse and inconvenience them.²⁰

Joint Consumer Groups misunderstand Joint Petitioners' proposal and the burdens that rolling recertification would have for consumers and ETCs alike. Under the Commission's rolling recertification rule, consumers will need to remember their initial date of enrollment to the Lifeline program—regardless of how many times they change providers—and to recertify on the basis of that date, even if it falls a day, week, or month after the individual changes providers, which in many cases would lead consumers to be de-enrolled despite continued eligibility to receive service.²¹ Further, in order to change service providers, a consumer already must fill out a new application for Lifeline service and present proof of eligibility. As such, a reasonable consumer who has recently changed providers would assume that they had already recertified, heightening the risk that he or she would ignore their annual rolling recertification request. Moreover, the increased likelihood of widespread de-enrollments will disincentivize ETCs from providing enhanced services and equipment, limiting consumer choice and curbing innovation in the Lifeline market, undermining two of the core goals of the Lifeline Modernization Order.

²⁰ Joint Consumer Groups Opposition at 4-5.

²¹ Joint Petitioners Petition at 21 (“Subscribers that recently switched service providers and confirmed their eligibility for Lifeline will not expect to have to recertify their eligibility again potentially within days, weeks or even a few months.”). As ETCs have found in California, consumers faced with rolling recertification are less likely to respond to recertification attempts and are more likely to be unfairly de-enrolled, sometimes within the first month of service.

For these reasons, the Commission should disregard Joint Consumer Groups’ challenge and adopt Joint Petitioners’ proposal, under which a subscriber’s eligibility would be reverified through a new application and presentation of proof when he or she switches service providers, resetting the recertification date to 12 months from the new enrollment date, and which will be less burdensome for consumers and more administratively manageable for ETCs, USAC and the National Verifier.

V. The Commission Should Adopt TracFone’s Proposal to Restore the 60-Day Non-Usage Rule and 30-Day Response Period

In its petition, TracFone argues that the Commission should restore the previous 60-day non-usage rule, arguing that “nothing in the record provides any basis for concluding that the de-enrollment for non-usage period should be reduced from 60 days to 30 days.”²² TracFone explains that reducing the non-usage period fails to account for consumers who are incapacitated or out of the country for a month.²³ Further, TracFone notes:

- 25 percent of its Lifeline subscribers who are de-enrolled under the non-usage rule re-apply for Lifeline service the following month;
- 70 percent of its Lifeline subscribers de-enrolled for non-usage who seek to re-enroll in the Lifeline program in the following month do so during the first 15 days of the month; and
- If the non-usage period is reduced to 30 days, the number of Lifeline subscribers who will be de-enrolled under the non-usage rule but subsequently re-enroll will triple.²⁴

Sprint provides additional data to support TracFone’s petition. Specifically, it notes that the three primary causes of inactivity—lost, broken or misplaced handsets and hospital stays—

²² See *Lifeline and Link Up reform and Modernization, et al.*, WC Docket No. 11-42, et al., TracFone Petition for Reconsideration, 23 (filed June 23, 2016).

²³ See *id.* at 24.

²⁴ See *id.*

have no relationship to disinterest or lack of need for Lifeline services.²⁵ Further, among those subscribers who had no activity for a 30 day period, 38 percent resumed their Lifeline usage within the next 15 days and 66 percent resumed their Lifeline used within the next 60 days.²⁶ Sprint estimates that “the increase in de-enrollments associated with a 30-day inactivity period will be significantly larger than the number of subscribers who remain enrolled because they had sent a text or used data.”²⁷ Joint Petitioners have had a similar experience. One of the Joint ETCs conducted an analysis of its customer base and found that approximately *three times* the number of individuals would be de-enrolled under the new 30-day non-usage period compared to the 60-day non-usage period.

We agree with TracFone and Sprint that halving the non-usage period would be tremendously burdensome for low-income consumers and ETCs. First, it would mean that a dramatically greater number of consumers will be unfairly de-enrolled despite a continued desire and eligibility to remain in the program. Second, the increased churn rate that would result from a shortened time period would disincentivize ETCs from offering advanced services and handsets, leaving low-income consumers with fewer and worse options than they otherwise would enjoy. Third, a shorter notification period would be unduly administratively burdensome for ETCs, which will have to process the de-enrollments and re-enrollments and educate consumers about the shortened non-usage period, as well as for USAC and the National Verifier (when it is implemented). Indeed, for these reasons, Joint Petitioner ETCs supported eliminating the non-usage rule altogether.²⁸

²⁵ See *Lifeline and Link Up reform and Modernization, et al.*, WC Docket No. 11-42, et al., Comments of Sprint Corporation, 6 (filed July 29, 2016) (Sprint Comments).

²⁶ See *id.*

²⁷ See *id.* at 7.

²⁸ See Joint Commenters Comments at 87-90.

There is no compelling benefit to outweigh the significant burdens associated with halving the non-usage and notification periods, and therefore Joint Petitioners agree with TracFone and Sprint that the Commission should restore the 60-day non-usage period and 30-day notification period.

VI. Conclusion

Those few opponents that challenged Joint Petitioners' positions fail to provide any meaningful data or evidence demonstrating how removing the benefit port freeze, imposing an unduly restrictive interpretation of minimum service standards, supporting further delays in ETC application processing, adopting a complex and confusing rolling recertification process or maintaining an unnecessarily shortened non-usage period will benefit consumers or the Lifeline market. The Commission should reconsider or clarify the rules in its Lifeline Modernization Order consistent with Joint Petitioners' submissions in this proceeding.

Respectfully submitted,

By:  _____

John J. Heitmann
Joshua T. Guyan
Jameson J. Dempsey
KELLEY DRYE & WARREN LLP
3050 K Street NW, Suite 400
Washington, D.C. 20007
(202) 342-8400 (voice)
(202) 342-8451 (facsimile)
jheitmann@kelleydrye.com

Counsel for American Broadband & Telecommunications Company, Blue Jay Wireless, LLC, i-wireless LLC, Telrite Corporation (collectively, the Lifeline Connects Coalition), and Assist Wireless, LLC, Easy Telephone Services Company d/b/a Easy Wireless, Prepaid Wireless Group LLC and Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect)

August 8, 2016

Certificate of Service

I, John J. Heitmann, hereby certify that on this 8th day of August, 2016, I caused a copy of the foregoing Reply of the Joint Lifeline ETC Petitioners to be served by USPS First Class Mail on the following:

Charles W. McKee, VP Gov't Affairs
Norina T. Moy, Director Gov't Affairs
Sprint Corporation
900 Seventh St. NW, Suite 700
Washington, DC 20001

Mike Romano, Senior VP
Brian Ford, Regulatory Counsel
NTCA – The Rural Broadband Association
4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203

Jeffrey Smith, President/CEO
David B. Cohen, Senior Policy Advisor
GVNW Consulting, Inc.
8050 SW Warm Springs Street, Suite 200
Tualatin, Oregon 97062

Derrick Owens, VP Government Affairs
Patricia Cave, Director of Government Affairs
WTA – Advocated for Rural Broadband
400 7th Street NW, Suite 406
Washington, DC 20004

David Springe, Executive Director
NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910

Paul Goodman, Senior Legal Counsel
The Greenlining Institute
1918 University Ave, 2nd Floor
Berkeley, CA 94704

David Bergmann
3293 Noreen Drive
Columbus, OH 43221
Counsel for NASUCA

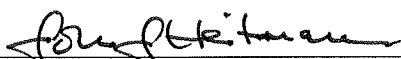
Melissa W. Kasnitz, Legal Counsel
Center for Accessible Technology
3075 Adeline Street, Suite 220
Berkeley, CA 94703

Mitchell Brecher
Debra McGuire Mercer
Greenberg Traurig, LLP
2101 L St NW, Suite 1000
Washington, DC 20037
Counsel for TracFone Wireless, Inc.

Steven Renderos, National Organizer
Center for Media Justice
436 14th St, Suite 500
Oakland, CA 94612

Kevin Rupy
United States Telecom Association
607 14th Street NW, Suite 400
Washington, DC 20005

Tracy Rosenberg, Executive Director
Media Alliance
1904 Franklin Street, #818
Oakland, CA 94612



John J. Heitmann